

1 paperwork.

2 Q That tape, I see white and blue tape on top of that  
3 bag --

4 A Yes.

5 Q Let me finish the question.

6 Did you put that tape?

7 A Yes, I did.

8 Q How do you know that?

9 A I signed the back of it.

10 Q Is that in the same condition today as it was when you  
11 vouchered them?

12 A No, it's not. It's ripped on the bottom.

13 MS. PARK: May I have that, please?

14 THE WITNESS: Sure.

15 A COURT OFFICER: (Handing.)

16 Q Other than this being ripped, is everything else in  
17 the same condition?

18 A Yes.

19 Q Now, what about this tape down here, did you do that?

20 A Let me see.

21 Q The clear --

22 The red and clear tape, do you see that?

23 A I don't believe -- I don't remember who did that.

24 Q So you did not do that?

25 A No.

Joanne Fleming

A612

1 Q Other than this and this bag being ripped, is it in  
2 the same condition?

3 A Yeah, yeah. Yes.

4 A COURT OFFICER: (Handing.)

5 Q And let's move onto People's 16.

6 Do you recognize People's 16?

7 A Yes, I recognize it.

8 Q And what is that?

9 A It's -- it's the straw that I vouchered.

10 Q How did Detective Barbato give that to you?

11 A She gave me the vouchers -- the bags.

12 Q You are referring to the envelope, the bag?

13 A Yeah, the bags, yeah.

14 Q And what did you do with that?

15 A I vouchered it.

16 Q What do you mean "vouchered it?"

17 A I did the paperwork and sealed it and signed it and  
18 sent it to the lab.

19 Q And what did you use to seal it?

20 A The tape.

21 Q What color is the tape?

22 A White.

23 Q And did you also sign across the tape?

24 A Yes, I signed across the tape.

25 Q And is that how you recognized that that's the one?

Joanne Fleming

A613

1 A Yes, yes.

2 Q Is that in the same condition today as it was from the  
3 last time -- let me finish the question -- is that in the same  
4 condition today as it was from the last time that you saw it?

5 A No, it wasn't.

6 Q What's different?

7 A The tape and the rip in the bag.

8 Q What tape?

9 A There is a -- there's evidence tape here on the  
10 bottom. It's got a -- it's got someone else's -- signed it.

11 MS. PARK: May I have that back, please?

12 A I don't know who did that.

13 A COURT OFFICER: (Handing.)

14 Q So, are you referring to the clear --

15 A Yes.

16 Q -- with red -- let -- officer, if I can just finish  
17 the question.

18 You're referring to the clear tape with red writing?

19 A Yes.

20 Q So that does not belong to you?

21 A That does not belong to me.

22 Q Other than that tape and the bag being ripped here, is  
23 it in the same condition?

24 A No -- yeah, yeah.

25 Q Yes?

Joanne Fleming

A614

1 A It's the same condition.

2 Q And, finally, I want you to look inside that box.

3 That's People's 17.

4 A Yes, it's the glass I vouchered.

5 Q How do you know that that's the glass you vouchered?

6 You can open it, officer.

7 A (Witness complies.)

8 Q I can help you, it's already --

9 A (Witness complies.)

10 Yeah.

11 Q So, do you recognize the bag?

12 A Yes, I do.

13 Q Okay.

14 And what do you recognize it to be?

15 A It's the glass from the -- it's the glass.

16 Q And is there an evidence tape there --

17 A Yes, there is.

18 Q -- that you placed?

19 A Yes.

20 Q Which one is that?

21 A The white tape.

22 Q Okay.

23 And did you sign across --

24 A Signed across it, yes.

25 Q Officer, if I can just finish my questions?

Joanne Fleming

A615

1 A Yes.

2 Q And did you put any writings on it?

3 A Yes. The writing -- I put down the voucher number,  
4 the complaint number, my name -- no, no, I didn't put my name.

5 Q Well, do you recognize your handwriting?

6 A Yes, it's me.

7 Q Do you recognize your handwriting, officer?

8 A Yes, I do.

9 Q And is that in the same condition today as it was from  
10 when you vouchered it?

11 A No, it's -- it looks like it's been taped.

12 Q And can you feel the bag, officer?

13 A Yes.

14 Q And what does it feel like?

15 A It feels like broken glass.

16 Q When you received it, what condition was that glass  
17 in?

18 A I don't recall.

19 Q Was it broken?

20 A I don't remember.

21 Q Was it broken?

22 A I don't -- I don't remember. I don't think -- I don't  
23 remember vouchering a broken glass, so...

24 Q And other than that red tape, is that bag in the same  
25 condition today?

Joanne Fleming

A616

1 A Yes.

2 MS. PARK: I'll take the evidence back.

3 A COURT OFFICER: (Handing.)

4 Q Officer Field, did you receive any item from Officer  
5 Hager that day?

6 A Yes, I did.

7 Q What did you receive?

8 A Okay, sexual evidence kit.

9 Q And where were you when you received that from Officer  
10 Hager?

11 A I was at the precinct.

12 Q Twenty-Eighth Precinct?

13 A Yes.

14 Q Do you recall about what time you received that?

15 A I think it was around nine o'clock, 9:00 p.m.

16 Q What did you do with the kit?

17 A I vouchered it, did the paperwork and --

18 Q I'm going to show you People's 20 -- I'm sorry,  
19 People's 19 -- premarked for identification only.

20 A COURT OFFICER: (Handing.)

21 Q Do you recognize People's 19?

22 A Yes, I do.

23 Q And what do you recognize it to be?

24 A It's the sexual evidence kit.

25 Q Is that the sexual evidence kit that you received from

Joanne Fleming

A617

1 Officer Hager?

2 A Yes -- yes, I did.

3 Q How do you know that?

4 A Because it's signed by the Officer Hager.

5 Q And do you recognize the writing?

6 A I think it's Officer Hager's. It's not mine.

7 Q But did you voucher it?

8 A I did the paperwork, and he was -- like, he collected  
9 it. We both brought it down to the lab together.

10 Q But you filled out the paperwork?

11 A Yes.

12 Q Was a voucher number assigned to that?

13 A Yes, there was.

14 Q What was the voucher number assigned?

15 A I'm not -- I don't recall. I don't have it.

16 Q Do you have any paperwork that would help you refresh  
17 your recollection?

18 A There is a -- the voucher paperwork. Do you have a  
19 copy of that?

20 Q Yes.

21 A COURT OFFICER: (Handing.)

22 Q What was the voucher number assigned, officer?

23 A It's 1000524859.

24 Q And when you received -- withdrawn.

25 MS. PARK: Judge, I'll offer it subject to

Joanne Fleming

A618

1 connection later on.

2 THE COURT: Number nineteen?

3 MS. PARK: Number nineteen.

4 MR. HERLICH: Yes, no objection subject to  
5 connection.

6 THE COURT: Okay, People's 19 is accepted into  
7 evidence subject to connection.

8 (Received and marked as People's Exhibit Number 19  
9 in evidence.)

10 MS. PARK: May I see the kit, please?

11 A COURT OFFICER: (Handing.)

12 Q And, officer, from the time that you received that kit  
13 from Officer Hager until the time you vouchered it, you said  
14 you took it to the lab?

15 A Yes.

16 Q Did it ever leave your possession?

17 A No, no.

18 MS. PARK: I have no further questions.

19 THE COURT: Okay, Mr. Herlich.

20 CROSS-EXAMINATION

21 BY MR. HERLICH:

22 Q So when you say you vouchered something, officer, you  
23 mean you prepared a property clerk invoice?

24 A Yes, property clerk invoice, yes.

25 Q And with regard to the three items that you mentioned:

Joanne Fleming

1 The glass, the straw and the coffee cup, those were given to  
2 you by Detective Barbato at Ninety-Two St. Nicholas Avenue,  
3 apartment 2G, is that correct?

4 A Yes.

5 Q And at the time that you arrived at the apartment, I  
6 believe it was your testimony that Detective Barbato had  
7 already put these three items in three respective evidence  
8 bags, correct? Is that correct?

9 A I think --

10 Q Is that correct?

11 A Not before I went there. I think she came there a  
12 little later.

13 Q So you arrived first at Ninety-Two St. Nicholas?

14 A Before --

15 Q Detective, but you weren't the individual who actually  
16 put on gloves and put the --

17 A I think she was there before me. Then she came back,  
18 something like that.

19 Q Okay.

20 At what point in time were the three items actually  
21 put into the three paper bags that are in court today?

22 A What time?

23 Q Was it when Detective Barbato returned after your  
24 arrival?

25 A Yes, Detective Barbato put it in the bag and then we

Joanne Fleming

A620

1 -- and then gave it to me to voucher.

2 Q In other words, you saw the three items prior to them  
3 being placed in those three bags, is that fair to say?

4 A I think, yes. I looked into the trash can, I saw it,  
5 yes, I did.

6 Q So when you arrived, the coffee cup was still sitting  
7 in the trash can?

8 A Yes.

9 Q And where was the glass and the straw?

10 A I think they were on a counter. I got it in my memo  
11 book. Can I look at my memo book?

12 Q Please, whatever refreshes your recollection.

13 A Yes.

14 The purple straw and glass were on a kitchen counter  
15 and the coffee cup was in the kitchen garbage can.

16 Q Okay.

17 Just so I'm clear, you were present when Detective  
18 Barbato put each of the three items in the three separate bags?

19 A Yes.

20 Q And that took place at Ninety-Two St. Nicholas Avenue?

21 A Ninety-Two St. Nicholas.

22 Q Then you transported the bags back to the precinct?

23 A Back to the precinct, did the vouchers and then  
24 transported the --

25 Q One second, okay?

Joanne Fleming

1                   It was at nine o'clock that officer -- is it Officer  
2 Hager?

3           A     Hager.

4           Q     He came to the precinct and handed you what you  
5 described as the sexual forensic evidence kit?

6           A     Yes.

7           Q     And you indicated you prepared a separate invoice for  
8 that, correct?

9           A     Yes.

10          Q     And the invoice --

11                You prepared one single invoice for the three items  
12 recovered from Ninety-Two St. Nicholas Avenue, correct? You  
13 didn't prepare three separate vouchers; it's one invoice for  
14 the three items, correct?

15          A     No, I think there was separate -- two separate  
16 invoices, I believe.

17                MR. HERLICH: I'd like to show the officer what  
18 could be marked as Defense Exhibit, I believe D for  
19 identification purposes.

20                THE COURT: You're up to E.

21                MR. HERLICH: For purposes of identification only.

22                THE COURT: E for identification.

23                A COURT OFFICER: (Handing.)

24          Q     Officer, please take a look at that and see if it  
25 refreshes your recollection.

Joanne Fleming

1 A Yes.

2 Q Were the three items that were recovered from  
3 Ninety-Two --

4 A Ninety-Two St. Nicholas. It says from the --

5 Q There was one invoice for these three items?

6 A Yes, and they --

7 Q That's all.

8 A And the second --

9 Q That's all.

10 Then a separate invoice for the sex forensic evidence  
11 kit?

12 A Yes.

13 Q And did you also prepare requests for laboratory  
14 examinations regarding --

15 A Yes.

16 Q -- all four of these items?

17 A Yes, we did.

18 Q And when you say you went to the lab, what lab did you  
19 take these items to?

20 A It's in Queens, the police lab.

21 Q The New York City Police Department Lab?

22 A Yes.

23 MR. HERLICH: No further questions, your Honor.

24 MS. PARK: Nothing further.

25 THE COURT: Thank you, officer. Please step down.

Joanne Fleming

1 (Whereupon, the witness exited the courtroom.)

2 THE COURT: Next witness, People.

3 MS. PARK: The People call Detective Randolff

4 Pinard.

5 (Whereupon, the witness exited the courtroom.)

6 A COURT OFFICER: Witness entering.

7 (Whereupon, the witness entered the courtroom.)

8 A COURT OFFICER: Remain standing, raise your

9 right hand and face the clerk.

10 R A N D O L F F P I N A R D, called as a witness, by and on  
11 behalf of the People at the Trial, having been duly sworn  
12 or affirmed, testified as follows:

13 THE CLERK: Have a seat.

14 A COURT OFFICER: Have a seat.

15 In a loud, clear voice, please state your name,  
16 spelling your last name, your shield and current command.

17 THE WITNESS: Detective Randolff Pinard,  
18 P-I-N-A-R-D; shield 5765; Manhattan Special Victims Squad.

19 A COURT OFFICER: Thank you.

20 THE COURT: Good afternoon, detective.

21 THE WITNESS: Good afternoon.

22 THE COURT: You may inquire.

23 DIRECT EXAMINATION

24 BY MS. PARK:

25 Q Detective, how long have you been with the New York

Joanne Fleming

A624

1 City Police Department?

2 A Thirteen years.

3 Q How long have you been with the Manhattan Special  
4 Victims Squad?

5 A Four years.

6 Q And can you just go through with us some of the other  
7 commands that you've been assigned?

8 A Well, when I first came out of the academy in 2003, I  
9 went to the One-O-Five Precinct.

10 Q I'm sorry, you went to where?

11 A When I first came out of the academy, I went to the  
12 One-O-Five Precinct in 2003. I did three years patrol, six  
13 years in domestic violence.

14 And in 2010, 2011, I was assigned to the detective  
15 bureau Manhattan Special Victims. And I became a detective in  
16 December 2012.

17 Q And what kind of cases do you currently handle?

18 A Sex crime.

19 Q Detective, I'm going to direct your attention to  
20 December 15th of 2014.

21 Were you assigned to the Manhattan Special Victims?

22 A Yes, I was.

23 Q And were you working on that day?

24 A Yes, I was working on that day.

25 Q And at approximately 12:50 p.m. were you in this

Joanne Fleming

1 courthouse?

2 A Yes, I was.

3 Q For what purpose?

4 A I was here to collect court-order sample, DNA swab,  
5 from the defendant.

6 Q Okay.

7 Well, from whom did you obtain the DNA swab?

8 A From --

9 Q Well, do you recall the person's name?

10 A Yes, Lonnie Harrell, if I recall correct.

11 Q Do you see Lonnie Harrell in the courtroom today?

12 A Yes, he's --

13 Q Can you please point to him and describe an article of  
14 clothing that he's wearing?

15 A He's sitting to my right with a gray beard and black  
16 sweater, black sweatpants.

17 THE COURT: Indicating Mr. Harrell.

18 Q So you mentioned that you obtained a DNA sample. How  
19 did you do that?

20 A I met him on the twelfth floor bridge --

21 Q Detective, just tell us --

22 A The process?

23 Q The process.

24 A It is Q-tips. I wear gloves. The Q-tips was inserted  
25 in his mouth for thirty seconds, removed, put it into the

Joanne Fleming

1 plastic tubing, closed it, sealed it and kept it as safekeeping  
2 before it was invoiced.

3 Q Did you seal it after you did that?

4 A Yes.

5 Q I'm going to show you what's been previously marked  
6 for identification as People's Exhibit 20.

7 A COURT OFFICER: (Handing.)

8 Q You can look inside too, detective.

9 A (Witness complies.)

10 Q Do you recognize People's 20?

11 A Yes.

12 Q What do you recognize it to be?

13 A I recognize it to be security paper envelope that  
14 contained the buccal swab.

15 Q What is a buccal swab?

16 A The buccal swab is the Q-tips.

17 Q And is that the buccal swab that you obtained from the  
18 defendant?

19 A Yes.

20 Q How do you know that?

21 A I recognize it from -- can I open it or --

22 Q Yes, that would help.

23 MS. PARK: Is there scissors?

24 A COURT OFFICER: (Handing.)

25 A Yes, I recognize it.

Joanne Fleming

1 Q How do you recognize it?

2 A By -- by the -- there is a serial number on it that  
3 matches one of the envelope that contained the swab.

4 Q Are there writings in front of the envelope?

5 A Yeah, there is a writing on this envelope which is my  
6 handwriting.

7 Q Okay.

8 Did you also sign it, the front of the envelope?

9 A This envelope, no, it wasn't signed. And that one,  
10 that's not my signature. That's Detective Barbato's  
11 handwriting.

12 Q But you also --

13 There are your writings on that as well?

14 A Yes, my handwriting is on this envelope.

15 Q And you recognize your handwriting?

16 A Yes, I recognize.

17 Q And after you collected it from the defendant, did you  
18 do anything to seal that inside envelope?

19 A Yes, it was sealed with red evidence tape.

20 Q Okay. If you can just --

21 The red evidence tape is yours?

22 A Yes.

23 Q Is that in the same condition today as it was from the  
24 time that you sealed it?

25 A Yes, same condition.

Joanne Fleming

A628

1 Q Now, what about the yellow evidence tape, did you do  
2 that?

3 A No, that's not me.

4 Q So that's different, correct?

5 A Yes, it's different.

6 Q Other than that yellow evidence tape, is that in the  
7 same condition --

8 A Same condition, yes.

9 Q And, detective, did that buccal swab, People's, I  
10 believe it was People's 20, did that remain in your custody  
11 until you turned it over to Detective Barbato?

12 A Yes.

13 MR. HERLICH: Objection.

14 THE COURT: Overruled.

15 MS. PARK: I have no further questions.

16 THE COURT: Your witness, Mr. Herlich.

17 MR. HERLICH: Just one moment, your Honor.

18 CROSS-EXAMINATION

19 BY MR. HERLICH:

20 Q Detective Pinard, good morning.

21 A Good morning, sir.

22 Q Did you prepare a property clerk invoice for the  
23 buccal swab that you obtained from Mr. Harrell?

24 A No, I did not.

25 Q Okay.

Joanne Fleming

1           You merely obtained the sample and then brought it to  
2 Detective Barbato?

3           A     Yes, it was.

4           Q     And where was that, at Special Victims Squad?

5           A     Yes, Special Victims.

6           Q     And, if you know, was that the responsibility of  
7 Detective Barbato, to prepare a property clerk invoice?

8           A     Yes.

9           Q     So you didn't prepare any paperwork in connection with  
10 your duty to obtain the buccal swab in this case, would that be  
11 fair to say?

12          A     Yes.

13                   MR. HERLICH: Nothing further, your Honor.

14 REDIRECT EXAMINATION

15 BY MS. PARK:

16          Q     Detective, was it Detective Barbato's responsibility  
17 to voucher that?

18          A     Because that's her case.

19          Q     And were you just assisting her?

20          A     I was just assisting her.

21                   MS. PARK: I have nothing further.

22                   THE COURT: Thank you. You can step down,  
23 detective.

24                   THE WITNESS: Thank you.

25                   (Whereupon, the witness exited the courtroom.)

1 THE COURT: Jurors, we're going to take our  
2 morning recess. We will take about ten or fifteen minutes.

3 Please remember all of my instructions to you.

4 I will see you in a few minutes. You can step  
5 out.

6 A COURT OFFICER: All rise.

7 (Whereupon, the jury exited the courtroom.)

8 (Whereupon, a recess was taken.)

9 (Whereupon, Senior Court Reporter Amalia Hudson  
10 took over the proceedings.)

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Joanne Fleming

A631

**PROCEEDINGS**

1 THE COURT: When I came back from the recess, I was  
2 informed by one of the court officers that juror, I think she  
3 is number eight, Ms. Zamm, has a 3:45 appointment she would  
4 like to make, but she can change it. How do you feel about  
5 me inviting her in and getting a sense of how important it  
6 is?

7 MS. PARK: That's fine.

8 MR. HERLICH: That's fine judge.

9 THE COURT: Bring her in, please.

10 How late do you think we'll go this afternoon?

11 MS. PARK: I have the doctor, and one officer will  
12 be very short this afternoon.

13 THE COURT: So you think we will be done by 3:45  
14 anyway?

15 MS. PARK: I think so. I think so.

16 THE CLERK: Juror entering.

17 THE COURT: Good morning, Ms. Zamm, and thank you  
18 for coming in. I understand you have an appointment today at  
19 3:45.

20 JUROR: Yes. Which I can change, but I just want  
21 to tell the doctor yes or no.

22 THE COURT: If it's not a hardship for you, I would  
23 ask if you can change it if at all possible. We might even  
24 end by that time. It's just a little hard to anticipate. I  
25 also noticed you're limping today.

**Amalia Hudson, SCR**

**PROCEEDINGS**

1 JUROR: Yes. I had a fall.

2 THE COURT: Is it related to your appointment  
3 today?

4 JUROR: No.

5 THE COURT: Are you able to continue to serve?

6 JUROR: Yes. I'm it's just leg. Not my head. So  
7 yesterday we left early I could have made that appointment.  
8 That could happen today, but --

9 THE COURT: It could happen, but I don't want to  
10 promise you, and then have you not make it.

11 JUROR: Is it unlikely.

12 THE COURT: Unlikely we'll end by 3:45?

13 JUROR: That it could end at 3:15.

14 THE COURT: I don't think we'll end at 3:15.

15 JUROR: I didn't think so. No problem. Thank you.

16 THE COURT: Thank you.

17 (Juror exits)

18 MR. HERLICH: Judge, one thing. My client just  
19 told me for the first time that he wants to go to Friday  
20 prayers.

21 THE COURT: He just told you that for the first  
22 time?

23 MR. HERLICH: Yes. Obviously when we began the  
24 trial he said we would come on Fridays.

25 THE COURT: Right. I already told this jury we are

**Amalia Hudson, SCR**

**PROCEEDINGS**

1 meeting on Fridays, and I factored that into my schedule. I  
2 asked. You recall I specifically asked is there any problem  
3 with Fridays, and I was told there was no problem with  
4 Fridays. The best I can do is perhaps he can go to Friday  
5 prayer in the morning since we're not going to have  
6 proceeding in the morning, we're only going to have  
7 proceedings in the afternoon, but I don't know if that can be  
8 done. If he can go the morning and then have him produced in  
9 the afternoon, but I think at this point after I specifically  
10 asked if there was a problem, and I was told there wasn't a  
11 problem, and I told the jurors we'll be meeting on Friday  
12 afternoons, I don't think I am pull a change on the jury at  
13 this late stage. The best I can do again is perhaps he can  
14 attend prayer in the Tombs or something in the morning.

15 MR. HARRELL: It's in the afternoon.

16 THE COURT: Sorry.

17 MR. HARRELL: I have to be there.

18 THE COURT: But you recall that I asked, right?

19 MR. HARRELL: Yes, I do. I can't change my mind?  
20 Think is my religious thing.

21 THE COURT: I asked you.

22 MR. HARRELL: I understood what --

23 THE COURT: Let me finish, okay. The reason I  
24 asked you was so that we can plan and schedule accordingly.  
25 You can't change your mind. No.

**Amalia Hudson, SCR**

**PROCEEDINGS**

1 MR. HARRELL: Why can't I change my mind?

2 THE COURT: Because look around you. How many  
3 people are working here? How many jurors are there here?

4 MR. HARRELL: It's because -- that's why I can't  
5 change my mind because of the jury, you're saying?

6 THE COURT: Yes. It's will be an inconvenience to  
7 the jury.

8 MR. HARRELL: Well, I think I want to go to  
9 service.

10 THE COURT: Okay. Well, if you go to service  
11 tomorrow and don't come to court, I am telling you right now.  
12 we are going to proceed in your absence.

13 MR. HARRELL: You're threatening me now? I don't  
14 get it. I am trying to figure out what you're doing.

15 THE COURT: That's what we are going to do.

16 MR. HARRELL: I want to go to service. I have to  
17 be there tomorrow.

18 THE COURT: When did you decide you had to be there  
19 tomorrow? When did you change your mind.

20 MR. HARRELL: I didn't change my mind. I was told  
21 I had to be there on Friday, this Friday.

22 THE COURT: Who told you that?

23 MR. HARRELL: My religious leader. I'm Muslim. I  
24 have to be there.

25 THE COURT: So you changed your mind. When did you

**PROCEEDINGS**

1 do that?

2 MR. HARRELL: I wanted this proceeding to go over  
3 already. I didn't even want to go this far, but, you know, I  
4 want to go service. That's all I'm asking you respectfully.

5 THE COURT: First of all you're not doing it  
6 respectfully.

7 MR. HARRELL: How do you want me to ask you, sir.  
8 May I go to service, please? Friday.

9 THE COURT: Well, I want you to acknowledge first  
10 of all when I asked you, you said no. That you were not  
11 going to go, right?

12 MR. HARRELL: I understand that.

13 THE COURT: Am I correct?

14 MR. HARRELL: I was mistaken.

15 THE COURT: You were mistaken, but we relied upon  
16 that.

17 MR. HARRELL: And I am sorry.

18 THE COURT: I'm sorry too because now we have 16  
19 jurors. We have court officers, a court reporter, a  
20 prosecutor, a defense attorney, and they are all scheduled to  
21 be here. I'm sorry.

22 MR. HARRELL: Well, I am sorry too.

23 THE COURT: If you go tomorrow to service, I am  
24 telling now, we are going to continue in your absence.

25 MR. HARRELL: I don't know what else to tell you.

**Amalia Hudson, SCR**

A636

**PROCEEDINGS**

1 THE COURT: Okay. Let's bring the jury in, please.

2 MR. HARRELL: With all due respect.

3 THE COURT: With all due respect, we'll continue in  
4 your absence.

5 MR. HARRELL: Why don't you have me leave now  
6 before they come in?

7 THE COURT: It's not Friday.

8 MR. HARRELL: I want to leave now. I don't want to  
9 be here now, so you can continue without me. I don't let  
10 him -- I don't him to say I made a mistrial or nothing. I  
11 want to leave now.

12 THE COURT: Why do you want to leave now?

13 MR. HARRELL: Because you just threatened saying I  
14 can't go because of them and yourself and everybody in the  
15 courtroom, and that is not right.

16 THE COURT: I'm insulting everybody in the  
17 Courtroom?

18 MR. HARRELL: No. That is not what I said, you was  
19 insulting anybody. I said you said I can't attend because  
20 everybody in the courtroom got to work. It's like I don't  
21 count. My religious believe don't count. Don't let them in  
22 because I want leave.

23 THE COURT: They count. That is why --

24 MR. HARRELL: I would like to leave, sir.

25 THE COURT: You're interrupting me. Your desires

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1 do count, and that is why my very first question to you the  
2 time you came in was, is there any issue for Friday because  
3 your religious beliefs do count, and the answer you gave me  
4 was no. No problem for Fridays. So it does count, and I  
5 relied upon your word, and I informed all the jurors of that.  
6 You understand me?

7 MR. HARRELL: Then I said I was Muslim, and I don't  
8 worry about Friday coming here. This what you're saying?

9 THE COURT: I don't even understand what you're  
10 saying.

11 MR. HARRELL: I didn't understand what you're  
12 saying. You're saying that you relied on me and you told  
13 them people what I said.

14 THE COURT: I didn't tell them what you said. What  
15 I said is we're going to have proceedings on Fridays.

16 MR. HARRELL: I don't want to disrupt your court,  
17 so you can proceed without me, and I will be back, but I want  
18 to attend service Friday.

19 THE COURT: Are you saying that if I bring this  
20 jury in and I don't excuse, you are going to be disruptive?

21 MR. HARRELL: I wouldn't do that. I would like to  
22 be excused now. I'm not trying to disrupt that. I don't  
23 want that to mess up. I don't want to say that you're going  
24 to give me a mistrial because I -- I'm not acting out. I'm  
25 asking you now before they come in?

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1 THE COURT: Mr. Herlich, would you like to be  
2 heard?

3 (Defense consulting with client)

4 MR. HARRELL: No. I don't feel comfortable now  
5 because, you know, I feel like you forcing me to do something  
6 I don't want to do.

7 THE COURT: But today is Thursday. It's not  
8 Friday.

9 MR. HARRELL: Yeah, but I don't want to be here,  
10 and I don't want to disrupt. Like you said, if I disrupt  
11 these proceedings while they here, I am going to be in -- I  
12 am going to have a situation on myself. Am I right? I'm not  
13 trying to do that. They are not here right now. I would  
14 like to leave, please.

15 I am not comfortable right now. I have this problem  
16 that when I get agitated, it just blows, and I am not trying  
17 to blow. It's like you said, I'm complying to what you're  
18 saying. You told me that.

19 THE COURT: Okay. Mr. Herlich, would you like to  
20 excuse him for a minute so we can discuss how to proceed?

21 MR. HERLICH: Yes.

22 THE COURT: We'll excuse him for a minute.

23 MR. HARRELL: I'm not come back out here.

24 THE COURT: Then have a seat if you're telling me  
25 you're not coming back out --

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1 MR. HARRELL: I just told you that, sir. I don't  
2 want to be disruptive in front of them.  
3 I would like to leave before the jury come in.

4 THE COURT: Your client is now telling me that if  
5 he leaves the courtroom, he's not coming back.

6 Would you like to heard Mr. Herlich?

7 (Defense counsel consulting with client)

8 MR. HARRELL: I don't feel comfortable.

9 (Defense counsel consulting with client)

10 MR. HARRELL: How is it between you and me with all  
11 these people standing around me. I don't feel comfortable  
12 now.

13 THE COURT: You don't feel comfortable today,  
14 Thursday.

15 MR. HARRELL: No. Right now what you're doing,  
16 you're making me uncomfortable.

17 THE COURT: I'm making you uncomfortable because I  
18 don't want you to be selfish and affect everybody else.

19 MR. HARRELL: That is not being selfish. That's  
20 your opinion. That is not --

21 THE COURT: All right. People, would you like to  
22 be heard?

23 MR. HARRELL: It's not being selfish. That's  
24 yours.

25 MS. PARK: Judge, I think if he's going to be

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1 disruptive with the jurors, he's forfeiting his right to be  
2 present.

3 MR. HARRELL: I am not being disruptive. There is  
4 no jury here right now. I don't want to be agitated in front  
5 of them.

6 THE COURT: You're threatening that you are going  
7 to be disruptive.

8 MR. HARRELL: No. I'm not threatening. I am  
9 saying I am getting agitated, and that don't look right.

10 THE COURT: Let the record reflect the defendant is  
11 yelling over the Court. The Court can't even get a word in.

12 MR. HARRELL: I am going to say it slowly.

13 THE COURT: Are you saying that if the jury comes  
14 in you're going to be disruptive?

15 MR. HARRELL: That's not what I am saying. I'm  
16 saying I don't want them to see me in this state that I am  
17 feeling agitated. I don't want them to get the impression  
18 that I am getting ready to do anything.

19 THE COURT: So what you're saying is that you are  
20 going to disrupt the proceedings.

21 MR. HARRELL: I did not say that. I said it three  
22 times already.

23 THE COURT: And you're yelling at the Court.

24 MR. HARRELL: Please let me leave, man, please.

25 THE COURT: All right. Mr. Herlich anything else?

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1 MR. HERLICH: No, Your Honor.

2 THE COURT: He is asking to be excused.

3 MR. HARRELL: Yes.

4 THE COURT: What I'm gathering from his words is  
5 that his agitation will cause him to become disruptive if  
6 the jury --

7 MR. HARRELL: I take meds. I don't want to spaz  
8 out in here.

9 THE COURT: I think we have no choice but to excuse  
10 him.

11 MS. PARK: Judge, just so he knows if he choses to  
12 be absence the case will go forward without him.

13 MR. HARRELL: I am not choosing -- I don't want to  
14 be here right now.

15 MS. PARK: And a witness will testify in  
16 Mr. Harrell's absence if he refuses to be present. I just  
17 wanted the record to be clear.

18 THE COURT: That's crystal clear. I made that clear  
19 to him as well. The proceeding will continue tomorrow in his  
20 absence.

21 MR. HARRELL: That wasn't hard.

22 (Defendant is escorted out of the courtroom)

23 THE COURT: You would like me to give a jury  
24 instruction of any kind.

25 MR. HERLICH: I would say no judge. Just can we

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1 continue.

2 THE COURT: You don't want me to tell them the  
3 defendant is not present and not to draw any adverse  
4 inference?

5 MR. HERLICH: Okay. You can do that. May we  
6 approach for a second?

7 THE COURT: Sure. On the record.

8 (Discussion held on the record at sidebar)

9 MR. HERLICH: The defendant just told me when I  
10 went to speak to him for a moment during the morning break  
11 that he wants to go to prayers, and that's the first time I  
12 ever heard. In addition, Your Honor, to you talking to him  
13 on the record if he is available Friday, I asked him that as  
14 well in the pens before the trial started, and he said  
15 Fridays were fine. So it's surprise to me.

16 THE COURT: It's a surprise to all of us.

17 The jury has already been told they're working Friday  
18 afternoon. It was put on the record.

19 Now what was not clear from the record just now is that  
20 defendant was really behaving aggressively, very aggressive.  
21 He was turning his body towards the officers. He was turning  
22 his body towards the Court. He was leaning forward. His  
23 voice was raised. He was yelling above the Court. I wasn't  
24 able to make my record, and he was asking to be excused  
25 basically, if you read between the lines, because he believes

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1       that he would disrupt the proceeding if the injury were  
2       brought in his presence.

3               I have no choice but to excuse him at this point. As  
4       far how we'll handle tomorrow, we'll have to deal with that,  
5       I guess, later on, but it was made clear to him if he does  
6       not come tomorrow we'll proceed without him.

7               MR. HERLICH: I mean at the end of business today,  
8       Judge, I will let him know that he may forfeit his right to  
9       testify because if he doesn't come tomorrow, the only thing  
10      left in the case is closings argument. We'll have to figure  
11      that out, but that is what it looks like. I mean I'm just  
12      saying that is I got to let him know -- I assume he may know  
13      that, but I didn't tell them that because I didn't realize --

14              THE COURT: Can you go tell him that now?

15              MR. HERLICH: I can If you like.

16              THE COURT: Yes. You can go ahead and do that.

17              MR. HERLICH: Okay.

18              MS. PARK: Also speak to him just to make clear  
19      that we're going to just go forward.

20              THE COURT: It's important that you tell him he may  
21      forfeit his right to testify.

22              MR. HERLICH: Okay. Your Honor, I will tell them  
23      right now.

24              (Pause in the proceedings)

25              THE COURT: Mr. Herlich, I asked you to come in

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1 because I'm troubled that the only proceeding that we would  
2 have tomorrow would be his testimony, and he would waive his  
3 right to testify. As you know that's a serious step, and  
4 Courts would look at that with very close scrutiny, although  
5 I hate to give into someone's whose behaving the way he is  
6 behaving, I think that if all we have left for tomorrow is  
7 his testimony, then I think, I would be prepared to adjourn  
8 the proceeding until Monday.

9 What I would like to ask you to do is in light of  
10 that -- in light of that is he willing to come out this  
11 afternoon given that he is getting what he wants. He gets  
12 Friday off. Would he be willing to come out this afternoon,  
13 and just let me know.

14 MR. HERLICH: Okay. Thank you.

15 MS. PARK: Not right now, Your Honor.

16 THE COURT: Not -- right now before we bring the  
17 jury in.

18 (Pause in the proceedings)

19 THE COURT: Mr. Herlich, have you had a chance to  
20 speak to your client.

21 MR. HERLICH: Yes, your Honor. This is his  
22 position. He says that he is too agitated and upset and he  
23 doesn't want to come out today. He wants to go back to his  
24 jail immediately, and in the same breath he says he wants to  
25 hear the DNA expert and doctor, but not today. And I said,

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1 "Well, we are not talking now about your constitutional right  
2 to practice your religion or your constitutional right to  
3 testify in your own behalf. Today is Thursday. Can you calm  
4 down and be present in court for those witnesses because the  
5 case will proceed in your absence." And he said, 'No. I  
6 cannot calm down but I am not giving up my right to be  
7 present for those witness, but he refuses to come to court  
8 for the balance of today. Either this morning or after the  
9 lunch break." Those are his words.

10 THE COURT: All right, and did he say anything  
11 about coming back Monday so that he could testify?

12 MR. HERLICH: Yes. He agrees to come Monday for  
13 his testimony.

14 THE COURT: Okay. So it appears that what we have  
15 here is he is upset and because he is upset he doesn't want  
16 to be present in the courtroom. He has certainly given every  
17 indication in words and, indeed, that if he is in the  
18 courtroom that he is going to act out.

19 He referred several times to a mistrial. He doesn't  
20 want to create a mistrial. I think it would be foolish for  
21 us to not heed those warnings. He's given us the warnings.  
22 He's told us, and we've seen first hand his demeanor, his  
23 behavior, his body language. There is every reason to  
24 believe that he if is brought out today, he will act out, and  
25 perhaps we'll have a situation that we don't want to have.

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1 I'm informed by Mr. Herlich, and Mr. Herlich informed  
2 the defendant that in recognition of the fact that all that  
3 would happen tomorrow is for Mr. Harrell to testify that we  
4 are prepared to give him tomorrow off exactly as he  
5 requested.

6 Despite that, he's still refusing to come in this  
7 afternoon. Although at the same time he's saying he wants to  
8 hear the DNA experts. Well, he can't have it both ways. He  
9 can't hear the witnesses that he wants to hear and decide he  
10 doesn't want to come in the courtroom. In essence he's  
11 highjacking the trial and directing when things are going to  
12 happen. So what we are going to do is we're going to  
13 continue this afternoon in his absence.

14 There really is no reason for his absence now since the  
15 reason for his upset was that he was going to be compelled to  
16 come in tomorrow. That's no longer the case. He is no  
17 longer being compelled to come in tomorrow. The reason for  
18 his upset has been addressed. He is still choosing not to  
19 come in, so we're going to continue this afternoon with the  
20 witnesses that we have. I will have to tell this jury there  
21 will be no proceeding tomorrow, and then on Monday morning  
22 we'll bring him back in for him to testify if that's what he  
23 wishes to do.

24 Mr. Herlich, do you think there is any chance -- my main  
25 concern, of course, is also the safety of security and the

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1 court personnel, and in particular the court officers. They  
2 are the ones that have to deal with the defendant. Do you  
3 think he could be brought out. We need to tell him the  
4 record that I just made.

5 MR. HERLICH: Do you want me to suggest to him --  
6 he was pretty adamant that he -- he's refusing to come into  
7 the courtroom again today. That was made very clear to me  
8 when I spoke to him.

9 THE COURT: How do you think we should handle that  
10 Lieutenant?

11 LIEUTENANT MCKEE: Judge, when we get notice when  
12 an attorney says someone is adamant about not coming to  
13 court, that is S.R.T., Special Response Team. You have to  
14 order us to extract him out of his cell. We bring a team  
15 into to take him out.

16 THE COURT: I am not going to order an extraction  
17 team. Simply to tell him what I just told you and what I put  
18 on the record, and which you already indicated to him. So  
19 we'll proceed without him. Again, if you request I can  
20 instruct the jury that they are not to draw any adverse  
21 inference from the fact the defendant is not at the defense  
22 table.

23 MR. HERLICH: That would be find, Your Honor.

24 LIEUTENANT MCKEE: Judge, do you want a member of  
25 the staff, the sergeant to inform him?

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1 SERGEANT GELORMINO: Judge, I will go tell him,  
2 listen, the judge is basically giving you what you want  
3 regarding tomorrow. Are you willing to come out? That way  
4 the judge can hear from you.

5 THE COURT: If you would be willing to do that  
6 Sergeant, that would be excellent, and I will wait for you to  
7 come back out.

8 (Pause in the proceedings)

9 THE COURT: Sergeant?

10 SERGEANT GELORMINO: In a one on one conversation  
11 with the defendant, the defendant stated in no uncertain  
12 terms he is not coming out under any conditions. He wants to  
13 go back to the facility, and it is what it is.

14 THE COURT: He understands that Monday he will come  
15 back?

16 SERGEANT GELORMINO: I didn't give him the date he  
17 was coming. I just told him you were going to consent to his  
18 right to observe his religious observances, and that you will  
19 adjourn the case tomorrow, but the two witness that were  
20 scheduled for today will be appearing today, and the only  
21 purpose of my come in there was to see if he wanted exercise  
22 his right to be present before the Court while those witness  
23 took the stand.

24 THE COURT: Thank you, Sergeant. I appreciate  
25 that.

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1           There you have it. I think we've made as thorough a  
2           record as we can possibly make. He's been given every  
3           opportunity to come in this afternoon, but even after he was  
4           given what he wanted, which was not have proceeding tomorrow,  
5           he is still refusing to come out this afternoon I will note  
6           that we have a DNA expert this.

7           MS. PARK: Yes.

8           THE COURT: And who else?

9           MS. PARK: The Safe Kit examiner, Dr. Singh, and  
10          Officer Hager.

11          THE COURT: And we subpoenaed that officer?

12          MS. PARK: Yes.

13          THE COURT: That officer is here pursuant to,  
14          subpoena because right now New York City is hosting the  
15          United Nations General Assembly, so officers are being  
16          denied. So I actually had to sign a so-ordered subpoena to  
17          get that officer here today. The DNA expert is here, a  
18          doctor is here, and there is really no reason why the  
19          defendant couldn't be here with us. He is simply choosing to  
20          act out, and I think that it's in his best interest frankly  
21          because if he acts out in the presence of the jury, it can  
22          only reflect poorly on him, and certainly we don't want to  
23          endanger the safety and wellbeing of any of the court  
24          personnel.

25          All right. Let's bring the jurors in, please.

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1 THE CLERK: Continue case on trial. People v.  
2 Lonnie Harrell. All the parties are present. all jurors are  
3 present.

4 THE COURT: Good afternoon jurors, well comeback.  
5 I apologize for the lengthy delay. A matter came up that  
6 required my attention, legal matter.

7 Jurors, I am sure you noticed Mr. Harrell is not sitting  
8 at the defense table at the moment. I ask you to not draw  
9 any adverse inference from his not being present. Just put  
10 it out of your mind. Don't speculate as to why that is.  
11 We're going to continue with the proceeding at this time.

12 The only chances to the schedule now is that tomorrow  
13 afternoon -- you may recall, we were going to start at 2:00  
14 tomorrow afternoon. We are not going to have proceedings  
15 tomorrow at all.

16 Again, we are well ahead of scheduled. There is a  
17 possibility that the People may actually rest their case  
18 today, maybe. So tomorrow there will be no proceedings.  
19 Once we adjourn today, we'll not meet again until Monday  
20 morning at 9:30.

21 People?

22 MS. PARK: The People call Jeannie Tamariz.

23 COURT OFFICER: Witness entering. Watch your step.  
24 Remain standing in front of the chair raise your right hand  
25 face the clerk.

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**PARK - DIRECT - TAMARIZ**

1 THE CLERK: Do you solemnly swear or affirm the  
2 evidence you shall give to the Court shall be the truth, the  
3 whole truth, and nothing but the truth?

4 THE WITNESS: I do.

5 THE CLERK: Have a seat.

6 COURT OFFICER: Have a seat. State your full name  
7 spelling your last name.

8 THE WITNESS: Jeannie Tamariz of T-A-M-A-R-I-Z.

9 COURT OFFICER: County of residence?

10 THE WITNESS: Richmond County.

11 THE COURT: Good afternoon.

12 You may inquire.

13 THE WITNESS: Good afternoon.

14 **DIRECT EXAMINATION**

15 **BY MS. PARK:**

16 Q Ms. Tamariz, by whom are you employed?

17 A By the New York City Office of Chief Medical Examiner,  
18 Department of Forensic Biological.

19 Q What agency is that affiliated with?

20 A We are under the umbrella of the Department of Health  
21 and Mental Hygiene.

22 Q Is that part of the New York City Police Department or  
23 New York City District Attorney's offices?

24 A No. It is not part of the N.Y.P.D. or the District  
25 Attorney's office.

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**PARK - DIRECT - TAMARIZ**

1 Q And it's a lab, correct?

2 A It is a laboratory, yes.

3 Q Is your lab accredited?

4 A Yes, we are.

5 Q By whom?

6 A We are accredited by the American Society of Crime  
7 Laboratory Directors Laboratory Accreditation Board and also by  
8 the New York State Commission on Forensics Science DNA  
9 Subcommittee.

10 Q Can you tell us what does accreditation means?

11 A Accreditation mean that our laboratory meets or exceeds  
12 guideline set forth by this accrediting body.

13 Q What does the Department of Forensics Biology do?

14 A The Department of Forensics Biology receives evidence  
15 collected from criminal cases in and New York City, and we look  
16 at the evidence. We examine it for the presence of biological  
17 substances.

18 Q What part of the City does your lab cover?

19 A We cover all the five boroughs, so Manhattan, Brooklyn,  
20 Bronx, Queens, and Staten Island.

21 Q What is our current title?

22 A I'm a Criminalist Level 3 which is a Senior Interpreting  
23 Analysis level criminalist.

24 Q Can you go through with us the different levels of  
25 criminalist in your lab?

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**PARK - DIRECT - TAMARIZ**

1 A Sure. There is a Level 1, Level 1s generally are in the  
2 laboratory doing a lot of the bench work. Level 2s are  
3 interpreting analyst level criminalist which basically means that  
4 they're able to make conclusions, write reports, and testify in  
5 court.

6 A Level 3 is a senior level interpreting analyst. Level  
7 4s supervise and sign our timecards for all the levels below them,  
8 and then we have management.

9 Q What are your duties as a Level 3 criminalists?

10 A As a Level 3 criminalist, I examine evidence, collect it  
11 at crime scenes. I look for biological substances, I submit  
12 samples from the evidence for further testing. I actually also  
13 go into the laboratory and perform the tests myself. I then look  
14 at the data that's collected from the samples that were  
15 processed, and then interpret the data, evaluate the case, and I  
16 then issue a report, and testify in court as needed.

17 Q How long been with the Department of Forensics  
18 Biological?

19 A Over 11 years.

20 Q Can you tell us about your background, your education,  
21 and relevant training that lead to your current position?

22 A Yes. I have a degree in biological from the State  
23 University of New York College at Oneonta. So basically with a  
24 degree in biological, you can enter into laboratory. I actually  
25 started at the bottom most level at the time which was a

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**PARK - DIRECT - TAMARIZ**

1 Laboratory Associate, and I essentially worked my way up the  
2 levels to where I am now.

3 What was the rest?

4 Q Some of other training or any relevant experience you  
5 may have had?

6 A Sure. So upon being hired as a criminalist, you also  
7 have to undergo an extensive six months training. During that  
8 training you attend lectures where you learn about the science of  
9 what is conducted in the case work. You then go into the  
10 laboratory, observe scientists actually doing the work.

11 You then practice the work yourself. Upon completion of  
12 that training you do what is called a competency, and a  
13 competency is basically a sample that you treat as if were real  
14 case work, and they can determine whether you are competent or  
15 able to perform these tests on actually cases.

16 Upon completing the competency because, I'm an  
17 interpreting analyst, I then also undergo a four hour oral  
18 examination for the senior scientist and management level, and  
19 then we also do courtroom training.

20 Q Have you passed all of those tests that you just  
21 referred to?

22 A Yes.

23 Q Did you receive any statistics train?

24 A Yes, we did.

25 Q Can you talk about that?

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**PARK - DIRECT - TAMARIZ**

1 A The statistics training is basically also with the  
2 in-house training that I described. There are lecture that come  
3 to our laboratory, outside lecture of professional in the  
4 statistics world. In addition to that, I also attend outside  
5 conferences where I regularly attend lectures on mixtures, DNA  
6 and statistics.

7 Q Have you examined items of evidence in your lab?

8 A Yes, I have.

9 Q Approximately how much times?

10 A Thousand of times.

11 Q Are have you developed DNA profiles?

12 A Yes, I have.

13 Q About how many times?

14 A Thousand of times.

15 Q Have you had occasion to testify as an expert about DNA  
16 analysis, DNA profiles, and the statical significance of them?

17 A Yes, I have.

18 Q How often or how many times and in what courts  
19 approximately?

20 A Over 25 times and all of the five boroughs of New York  
21 City, so Manhattan, Brooklyn, Bronx, Queens and Staten Island.

22 MS. PARK: Your Honor, at this time, I ask that  
23 this witness be deemed an expert in the field of DNA  
24 analysis, DNA profiles and their statistical significance.

25 MR. HERLICH: No objection, Your Honor.

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**PARK - DIRECT - TAMARIZ**

1 THE COURT: Very well. At this time, the Court  
2 will recognize the witness as an expert in the field of DNA  
3 analysis, DNA profiles and it's statistical significance.

4 Q Ms. Tamariz, tell us what is DNA?

5 A DNA is the genetic material we all have in your body.  
6 It's what makes us who are as humans. Most of the DNA that we  
7 have in our bodies are the same from one individual to the next  
8 because we are all humans, and we all have two eyes and one nose.  
9 However, there is a region in the DNA that we specifically look  
10 at in the testifying that we do, and it extremely unique amongst  
11 individuals.

12 Actually no two individuals have the same DNA at this  
13 location that we look at with the exception of identical twins.

14 Q And are those the regions that your lab looks at?

15 A Yes.

16 Q What is a DNA profile?

17 A A DNA profile looks a lot like a string of numbers.  
18 It's sort of like your own genetic serial number. it is a unique  
19 string of numbers. It consists of 15 autosomal,  
20 A-U-T-O-S-O-M-A-L, locations that we look at, and it's unique  
21 amongst individuals. No two individuals have the same DNA  
22 profile with the exception of identical twins.

23 Q Can you explain what an autosomal locations is?

24 A Yes. So we have many chromosomes in your body, so  
25 basically an autosomal locations is a location that is not the

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**PARK - DIRECT - TAMARIZ**

1 sex chromosome. The sex Chromosome is basically giving us  
2 information as whether we are have male or female. Females have  
3 an XX, and males have an XY.

4 Q What is an allele?

5 A An allele is a variation on a gene. The way we look at  
6 alleles in our testing is it looks like a number, and so alleles  
7 make up the string of numbers that we see in someone's DNA  
8 profile.

9 Q And you mentioned that you looked at locations when you  
10 were talking about DNA profiles. How many locations or loci are  
11 you looking at?

12 A We are looking at 15 autosomal loci and one sex  
13 determining location.

14 Q Does a person's DNA profile change over that person's  
15 lifetime?

16 A No, it does not.

17 Q And is the person's DNA the same throughout the person's  
18 body whether it be semen, blood, saliva?

19 A Yes. It is same in your skin cells as it is in your  
20 saliva, as it is in your blood, on your head, or on feet,  
21 throughout your body.

22 Q Can you describe for us how is evidence handled in your  
23 lab?

24 A Evidence is delivered to our laboratory by the N.Y.P.D  
25 it is then signed into what we call our team of people which

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1 consist of our Evidence Unit.

2           These people are trained in receiving evidence and  
3 starting what we call a chain of custody. All of that is  
4 documented in our computer system, and then the evidence is put  
5 into a locked facility until it's ready for us to examine.

6           Q     Is there quality control testing in your lab?

7           A     Yes, there is.

8           Q     Can you describe what that is?

9           A     Basically every time a test is conducted, we do quality  
10 control tests. We can do quality control tests on the chemicals  
11 that we use to perform these tests, and we can do quality control  
12 tests as we are performing the tests. An example of that would  
13 be when I have a test, and I have what is called a positive and a  
14 negative control.

15           The positive control is used so that I know that the  
16 test is giving a result because I know what the positive control  
17 data is supposed to look like, and a negative control is used to  
18 insure that there is no contamination, and the negative control  
19 is supposed to give me no results.

20           Q     Can you describe how the result and analysis are  
21 documented in your lab?

22           A     Every time we examine a package, open it up, we are  
23 documenting that in your notes, and our notes are collected  
24 within the computer system.

25           Q     Is there a rotation system within your lab?

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1 A Yes, there is.

2 Q Can you tell us about that?

3 A Because we are a very large lab and we collect evidence  
4 from all five boroughs, there are many cases to examine and a  
5 very short period of time. We have a system called the rotation  
6 system where we have analysts that are designated to certain  
7 parts of the process for a given period of time.

8 So, for example, there is a group of analysts who are  
9 solely performing evidence examination. So they are in charge of  
10 processing as many cases as they can, and they move their samples  
11 then to the next process because they are examining, they can  
12 examine multiple cases at one time throughout the week, and then  
13 the samples that they collect, they send it to another group of  
14 scientists who that same week can be in charge of actually  
15 extracting the DNA from that sample. So in this way we can  
16 manage -- we manage to process thousands of cases in a very  
17 short period of time.

18 Q And are the results supervised and reviewed?

19 A Yes, they are.

20 Q How is that done?

21 A Every -- at every process there is review step. So  
22 before any given sample can go the next level, it does get  
23 reviewed. Upon completion of the testing for the entire case,  
24 all of evidence in that case it is especially reviewed by the  
25 interpreting analyst, the person who's going to then make the

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1 conclusions and decide if further testing needs to be done or if  
2 the case is ready to be reported.

3 Q Ms. Tamariz, what is an evidentiary sample?

4 A An evidentiary sample is a sample that I would collect  
5 from the evidence.

6 Q The evidence that is submitted by the N.Y.P.D. or  
7 another law enforcement agency?

8 A Correct?

9 Q What about an exemplar? What is that?

10 A An exemplar is a reference sample from an individual.  
11 Generally an exemplar is in the form of an oral swab, a swab is  
12 basically a Q-tip, a stick with a cotton ball at the end of it,  
13 and the way we collect exemplars from individuals is we take this  
14 swab and we rub the inside of their cheek cells in their mouth,  
15 and there we can collect sufficient DNA to then process it and  
16 see what their DNA profile is for purpose of comparing it to the  
17 evidence.

18 Q Is that also called a buccal swab or a buccal specimen?

19 A Yes, it is.

20 Q And are exemplars and evidentiary samples tested in the  
21 same area?

22 A Generally exemplars are taken from the mouth. They are  
23 exceptions. If the individual is deceased, then sometimes at the  
24 autopsy they will take samples of blood, but generally exemplars  
25 are taken from the mouth.

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1 Q I am sorry. I meant in your lab when you do testing of  
2 evidentiary samples and testing of exemplar such as oral swabs.  
3 Are they done in the same area?

4 A No, they're not. So exemplars because their reference  
5 samples they are known samples. They are processed entirely  
6 separate and actually even in separate rooms from where the  
7 evidence is being processed.

8 Q Why is that?

9 A Well, because we don't want to -- we want to decrease  
10 the chances where samples can get mixed up. So exemplar samples  
11 are always processed together with other exemplars and evidence  
12 sample are always processed with evidence samples.

13 Q And whenever you or anyone else in your lab does DNA  
14 analysis, is it required that each step of the process be  
15 documented from the receipt of the evidence through the  
16 conclusion of the testing, and to the return of that evidence?

17 A Yes. All of that is documented in the chain of custody  
18 contained in the case file.

19 Q Is it required that the results be recorded.

20 A Yes.

21 Q And are those notations made at or about the time of the  
22 observation they record?

23 A Yes.

24 Q Are those notes and reports made and kept in the regular  
25 and ordinary partner course of business of the Office of Chief

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1 Medical Examiner Department of Forensic Biology lab?

2 A Yes.

3 Q Just from now on I am going to call it OCME for short  
4 and do these reports include all raw data generated by the  
5 testing?

6 A Yes.

7 Q Does the lab have a business duty to make keep these  
8 results and records?

9 A Yes, we do.

10 Q Is each DNA case file given a unique identifying  
11 numbers?

12 A Yes, it is.

13 Q And turning to this case was evidence tested in the case  
14 of complaining witness Cypress Smith?

15 A Yes, there was.

16 Q Did that case receive a unique file number?

17 A Yes, it did.

18 Q I'm showing you what I have previously marked for  
19 identification as People's Exhibit 25. Do you recognize People's  
20 25?

21 A Yes, I do.

22 Q What is it?

23 A This is a certified copy of my case file.

24 Q And what does that case file contain?

25 A It contains all of the examination notes and the raw

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1 data in also including the reports for this particular case.

2 Q And would that case file contain the evidentiary sample  
3 that we talked about earlier?

4 A Yes.

5 Q And were notes of each step of the test kept in the  
6 manner that you describe -- that was just described earlier?

7 A Yes.

8 Q And the exhibit that is in front you said it was  
9 certified copy, correct?

10 A Yes.

11 Q Did you compare People's 25 with the original?

12 A Yes, I did.

13 Q And is an exact duplicate?

14 A Yes, it is.

15 MS. PARK: Your Honor, I offer People's 25 in  
16 evidence and subject to redaction?

17 THE COURT: Any objection?

18 MR. HERLICH: No objection.

19 THE COURT: People's 25 is accepted into evidence  
20 subject to redactions.

21 Q Ms. Tamariz, a number of items were received for test  
22 under this case number, correct?

23 A Yes.

24 Q And was a sexual offense evidence collection kit one of  
25 them?

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1 A Yes, it was.

2 Q What was the voucher number on that kit?

3 A If I may refer to.

4 THE COURT: Please.

5 A The voucher is 1000524859.

6 Q When did your lab receive the kit?

7 A We received it July 17, 2014.

8 Q I am going to show you People's 19 for identification.

9 Did you recognize people's 19?

10 A Yes, I do.

11 Q What is it?

12 A This is a sexual assault kit that was collected for this  
13 case.

14 Q How do you know that?

15 A I know that because I see the analyst's initials on the  
16 box.

17 Q Analyst meaning analyst within your lab?

18 A Yes.

19 Q Are there any other markings that identify what this kit  
20 is that you recognize?

21 A Yes, sure.

22 Q What are they?

23 A There are stickers as well that we apply from your  
24 computer system that we print, and we also affixed to the box.

25 Q And is there a forensic biological number attached to

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1 it?

2 A Yes.

3 Q And what is the unique file number for this case file?

4 A It's FB1404050.

5 Q And is that number contained on that rape kit?

6 A Yes, it is.

7 Q And when your lab received that kit what condition was  
8 it in?

9 A It was sealed.

10 Q How was it sealed?

11 A With tape.

12 Q And after the testing, what happened to the kit?

13 A It's sealed again and put back into a locked cage.

14 Q Can you show us which seal was done by your lab, and how  
15 you know that?

16 A So these boxes can pretty much generally open in this  
17 one direction. You flip this lid up. So what we do is we cut  
18 the tape that is in the perimeter of the top portion of this box,  
19 and then -- to open it, and then to seal it we then seal it again  
20 with our yellow evidence tape, and on the tape the analyst will  
21 initial the tape.

22 Q So the yellow evidence tape belongs to your lab?

23 A Correct.

24 MS. PARK: Your Honor, I am going to offer People's  
25 Exhibit 19 subject to connection.

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